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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/469,606	12/22/1999	HEINZ PETER VOLLMERS	50072/002002	5150

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CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

EXAMINER

HARRIS, ALANA M

ART UNIT	PAPER NUMBER
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1643

NOTIFICATION DATE	DELIVERY MODE
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02/22/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentadministrator@clarkelbing.com

Office Action Summary

Application No.

09/469,606

Applicant(s)

VOLLMERS ET AL.

Examiner

Alana M. Harris, Ph.D.

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,42,43 and 45-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,42,43 and 45-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 1, 2007 has been entered.

2. Claims 1, 4, 42, 43 and 45-56 are pending.

Claims 1, 4, 42, 43 and 45-56 are examined on the merits.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Withdrawn Rejection

Claim Rejections - 35 USC § 112

4. The rejection of claims 1, 4, 42, 43 and 45-56 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in light of Applicants' arguments.

Maintained Rejection

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The rejection of claims 1, 4, 42, 43 and 45-56 under 35 U.S.C. 102(b) as being anticipated by Vollmers et al. (Cancer 76(4): 550-558, August 15, 1995/ IDS reference submitted January 26, 2004), as evidenced by Hensel et al. (Cancer Research 59: 5299-5306, October 15, 1999/ IDS reference submitted January 4, 2002) is maintained.

Applicants have submitted a 37 C.F.R. § 1.132 declaration authored by Dr. Frank Hensel on November 1, 2007. Dr. Hensel declares Vollmers does not describe the claimed invention and Hensel implemented stringency conditions not of record in Vollmers, hence Vollmers does not describe the isolated glycoprotein. Applicants' corresponding Remarks submitted November 1, 2007 also assert "Hensel describes additional purification steps that must be taken to isolate the 82kD protein" and "Hensel shows that ...whole cell lysate in Vollmers is insufficient to isolate the 82 kD glycoprotein.", see pages 7 and 8 of the Remarks. The declaration and points of view have been carefully considered, but have been found unpersuasive.

The Examiner concurs with Applicants that the starting material in Vollmers is the whole cell extract, albeit the additional stringency requirements are not performed in

Vollmers, the isolated 82 kD glycoprotein is inherently a constituent of the said extract. While Hensel declares additional method steps are necessitated in order to yield the 82kD glycoprotein this does not teach away from Vollmers isolating cell extracts from stomach adenocarcinoma cell line 23132, see page 552, Western...section. It is art known, as well as generally known that isolated is defined as separating or removing one entity or article from others. It is clear the glycoprotein of Vollmers was isolated from said cell line and Hensel used the same membrane preparations of 23132 cells as Applicants. It is without question this cell line inherently has a glycoprotein comprising the human amino acid primary structure of CD55 and a tumor-specific N-linked glycostructure and exhibits and possesses the same properties as that claimed. This disclosed cell line comprises the said structure and glycostructure with a relative molecular mass of approximately 82kDa as evidenced by Hensel. Hence, the rejection is proper and maintained for the reasons stated and of record.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alana M. Harris, Ph.D. whose telephone number is (571)272-0831. The Examiner works a flexible schedule, she can normally be reached between the hours 7:30 am to 6:30 pm, with alternate Fridays.

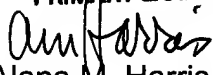
If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Larry R. Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALANA M. HARRIS, PH.D.
PRIMARY EXAMINER


Alana M. Harris, Ph.D.
06 February 2008